IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/08/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.2487 OF 1996

1. Ismail
2. Asan Sahib ..Petitioner

-Vs-

1. The District Collector
Ramanathapuram

2. The Special Tahsildar
AdDravidar Welfare
Ramanathapuram ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorari as stated therein.

For petitioner :Mr.S.Thiruvengadaswamy

For respondents : Mrs. N.G.Kalaiselvi,Spl.G.P.

:ORDER

Heard the learned counsel appearing for the parties.

2. In this writ petition, the acquisition of land by the respondents under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 (Tamil Nadu XXXI of 1978) is being challenged. Though several contentions have been raised it is unnecessary to deal with them as the writ petition is to be allowed on the question relating to non-compliance with the provision contained in Section 4(2) of the Act. For convenience the aforesaid provision is quoted hereunder.
"4(2) Before publishing a notice under Section (1), the District collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired."
It has been asserted in the writ petition that the Gazette notification under Section 4(1) of the Act was published by the Collector without complying with the provision under Section 4(2). A bare perusal of Section 4 would make it clear that before publishing the notification relevant to acquisition under Section 4, the Collector is required to issue notice to the person concerned

in accordance with Section 4 (2). It has been held in several decisions of this Court including N.LOGANATHAN V. THE SPECIAL TAHSILDAR, A.D.W., TIRUVELLORE (1996 (1) M.L.J. 442) that the provision contained in Section 4(2) is mandatory and any acquisition in violation of such provision is null and void.

3.In the present case, though counter has been filed, there is no assertion to the effect that notice as contemplated under Section 4(2) has been issued to the petitioner before publication of the Gazette dated 1.11.95. In fact, it appears that only after publication of the Gazette dated 1.11.1995, a notice was issued to the petitioner for the first time in Form No.III on 21.12.1995. Notice under Form No. III relates to the question of the award. On the other hand notice under Section 4(2) is in Form No.I. Such a notice has not been issued.

4.Following the aforesaid decision, I quash the gazette notification dated 1.11.1995. The writ petition is accordingly allowed. No order as to costs.

21-08-2002

Index:yes
Internet:yes
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To

1. The District Collector
Ramanathapuram

2. The Special Tahsildar
AdiDravidar Welfare
Ramanathapuram

P.K.MISRA,J.

W.P.NO.2487/1996

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